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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 20

[GN Docket No. 13-111; RM-11430; ET Docket No. 08-73; WT Docket No. 10-4; PRM09WT; PRM11WT; FCC 13-58]

Promoting Technological Solutions to Combat Contraband Wireless Device Use in Correctional Facilities

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission proposes rules to encourage the development of multiple technological solutions to combat the use of contraband wireless devices in correctional facilities nationwide. Specifically, the Commission proposes rule modifications to facilitate spectrum lease agreements between wireless providers and providers or operators of managed access systems. The Commission further proposes to require wireless providers to terminate service to a contraband wireless device if an authorized correctional facility official notifies the provider of the presence of the contraband wireless device within the correctional facility. The Commission seeks comment on these proposals as well as other technological approaches for addressing the problem of contraband wireless device usage in correctional facilities.

DATES: Interested parties may file comments on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, and reply comments on or before **[INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments, identified by GN Docket No. 13-111, by any of the following methods:

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the Commission's Electronic Comment Filing System (ECFS), through the Commission's Web site <http://fjallfoss.fcc.gov/ecfs2/>. Filers should follow the instructions provided on the Web site for submitting comments. For ECFS filers, in completing the transmittal screen, filers should include their full name, U.S. Postal service mailing address, and GN Docket No. 13-111.

- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. Generally if more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Note that while multiple dockets are listed in the caption, commenters are only required to file copies in GN Docket No. 13-111.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.
- In addition, parties must serve one copy of each pleading with the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW, Room CY-B402, Washington, DC 20554, or via email to fcc@bcpweb.com.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the SUPPLEMENTARY INFORMATION section of this document.

FOR FURTHER INFORMATION CONTACT: Melissa Conway, Melissa.Conway@fcc.gov or (202) 418-2887, of the Wireless Telecommunications Bureau, Mobility Division.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rulemaking (NPRM), FCC 13-58, adopted on April 29, 2013, and released on May 1, 2013, in GN Docket No. 13-111; RM-11430; ET Docket No. 08-73; WT Docket No. 10-4; PRM09WT; PRM11WT;

and FCC 13-58. The full text of the NPRM and copies of any subsequently filed documents in this matter may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC 20554. Customers may contact the Commission's duplication contractor at its website, www.bcpweb.com, or by calling (202) 488-5300. Document can also be downloaded in Word or Portable Document Format (PDF) at <http://www.fcc.gov/guides/cramming-unauthorized-misleading-or-deceptive-charges-placed-your-telephone-bill>.

Pursuant to 47 CFR 1.1200 through 1.1216, this matter shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's ex parte rules. Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must: (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made; and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with section 1.1206(b) of the Commission's rules. In proceedings governed by section 1.49(f) or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

People with Disabilities: To request materials in accessible formats for people with disabilities (Braille,

large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

INITIAL PAPERWORK REDUCTION ACT OF 1995

The NPRM seeks comment on potential new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), we seek specific comment on how we might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”

SYNOPSIS

1. In the NPRM, the Commission proposes measures to facilitate the development of multiple technological solutions to combat the use of contraband wireless devices in correctional facilities nationwide. Prisoners’ use of contraband wireless devices to engage in criminal activity is a serious threat to the safety of prison employees, other prisoners, and the general public. The Commission proposes a series of modifications to its rules to facilitate spectrum lease agreements between wireless providers and providers or operators of managed access systems used to combat contraband wireless devices. The NPRM also seeks comment on the Commission’s proposal to require wireless providers to terminate service, if technically feasible, to a contraband wireless device if an authorized correctional facility official notifies the wireless provider of the presence of the contraband wireless device within the correctional facility. While the Commission is limiting its proposals to managed access and detection solutions, the Commission nevertheless invites comment on other technological approaches for addressing the problem of contraband wireless device use in correctional facilities. For each proposal, the Commission requests specific comment regarding costs and benefits.

Streamlining Authorization of Leases for Managed Access Systems for Use in Correctional Facilities

2. Managed access systems are micro-cellular, private networks that analyze transmissions

to and from wireless devices to determine whether the device is authorized or unauthorized for purposes of accessing public carrier networks. Authorized devices are allowed to communicate normally with the commercial wireless network, while transmissions to or from unauthorized devices are terminated. To date, wireless providers and managed access providers have used spectrum lease agreements to negotiate the transfer of rights for such systems and have sought approval or provided notification of such agreements under the Commission's spectrum leasing rules. Additionally, the managed access lessee typically seeks to modify its regulatory status from commercial mobile radio service (CMRS) to private mobile radio service (PMRS), which requires additional filings and results in processing delays. The Commission proposes rule and procedural changes to facilitate a streamlined application process for spectrum leases entered into exclusively to combat the use of unauthorized wireless devices in correctional facilities.

3. The Commission proposes to modify its rules and procedures to make qualifying leases for managed access systems in correctional facilities subject to immediate processing and approval. The Commission proposes to immediately process long-term de facto lease applications and spectrum manager notifications for managed access systems, even in cases where grant of multiple lease applications would result in the lessee holding geographically overlapping spectrum rights or where the license involves spectrum subject to designated entity unjust enrichment provisions or entrepreneur transfer restrictions. Pursuant to this proposal, grant or acceptance of qualifying managed access leases would be indicated the following business day on the Commission's Universal Licensing System. The accepted lease would then be effective upon the date set forth by the licensee and lessee in the lease application or notification. The Commission seeks comment on the rule changes necessary to implement this proposal.

4. Specifically, the Commission seeks comment on its proposal to require applications or notifications for managed access leases to meet the completeness standards set forth in its existing spectrum leasing rules. Licensees and lessees would continue to file Form 608, and would be required to complete all relevant fields and certifications on the form. If an application or notification is sufficiently complete but the responses or certifications raise questions regarding the lessee's eligibility or

qualification to hold spectrum, the Commission proposes that the application or notification will not be eligible for immediate approval or processing consistent with the Commission's current processes. The Commission proposes to modify Form 608 to allow managed access providers and CMRS licensees to identify that a proposed lease is a managed access lease exclusively for a system in a correctional facility, and to require managed access providers to attach a written certification explaining the nature of the managed access system, including the location of the correctional facility, the provider's relationship to the facility, and the exact proposed coordinates of the leased spectrum boundaries. Regarding enforcement mechanisms, the Commission seeks comment on its proposal to continue to apply existing spectrum leasing rules to managed access leases, and whether these protections are sufficient to ensure rule compliance in the context of Commission authorization of managed access systems deployed to combat contraband phone use, and whether any additional conditions or alternative mechanisms are required to further the public interest. The Commission also seeks comment on whether managed access operators should be encouraged or required to provide notification to households and businesses in the vicinity of the correctional facility in which a managed access system is installed and how such a process would be implemented.

5. The Commission proposes to amend section 20.9 of its rules to establish that managed access services in correctional facilities provided on spectrum leased from CMRS providers will be presumptively treated as PMRS. The Commission proposes to require the lessee to certify on the application or notification that the leased spectrum will be used solely for the operation of a managed access system at a correctional facility. However, a managed access lessee would retain the option of applying for CMRS status by including an exhibit to Form 608 demonstrating that the service meets the CMRS definition or is the functional equivalent of CMRS. The Commission seeks comment on this proposal, and also whether it should apply the Commission's 911 and enhanced 911 (E911) rules to managed access services that provide access to 911 and E911.

6. The Commission seeks comment on its proposal to exercise forbearance in order to immediately process de facto leases for managed access systems in correctional facilities that do not raise

concerns with use and eligibility restrictions, that do not require a waiver or declaratory ruling with respect to a Commission rule, but that do involve leases of spectrum in the same geographic area or involve designated entity unjust enrichment provisions and transfer restrictions. Specifically, the Commission proposes to forbear from the applicable prior public notice requirements and individualized review requirements of sections 308, 309, and 310(d) of the Communications Act (“the Act”). The Commission also seeks comment on a proposal to streamline the process for a managed access provider to obtain special temporary authority to operate a managed access system in a correctional facility prior to obtaining a more permanent authorization.

7. The Commission also seeks comment generally on proposals submitted by Global Tel*Link Corp. (filed July 20, 2011), the Mississippi Department of Corrections (filed Aug. 21, 2009), and Tecore Networks (comments filed in GN Docket No. 12-52 on Apr. 30, 2012) and the extent to which they may be incorporated into the NPRM’s lease processing and approval proposals.

Detection

8. In addition to the Commission’s proposals regarding streamlining the lease application process for managed access systems, the Commission seeks comment on proposals to facilitate the deployment of detection systems. Detection systems generally identify the location of a contraband wireless device through triangulation, and then correctional facility employees search for and physically confiscate the identified contraband device to terminate operations. Detection system operators do not require a FCC license or authorization. The Commission seeks comment on a proposal submitted by CellAntenna (filed Sept. 2, 2011) that consists of a three step plan: first, the correctional facility identifies unauthorized wireless devices within the facility; second, the warden transmits the identifying information of the contraband device to the appropriate CMRS provider via email or fax; and third, the CMRS provider sends a message to the unauthorized device notifying the user that the device is unauthorized and suspends service to the device.

9. Consistent with CellAntenna’s proposal, the Commission proposes to require CMRS licensees to terminate service to contraband devices within correctional facilities pursuant to a qualifying

request from an authorized party. The Commission seeks comment on the specific information that the correctional facility must transmit to the provider to effectuate termination, timing for carrier termination, methods of authenticating a termination request, and other issues. The Commission also seeks specific comment on the cost burdens that a carrier would face in establishing the reporting mechanisms, technical upgrades, if any, operational enhancements, and personnel training necessary to handle requests for termination. In addition, to the extent that carriers incur such costs to support requests for termination, the Commission seeks comment on mechanisms by which carriers could recoup the initial and ongoing expense of complying with a requirement to terminate service to contraband devices.

10. With regard to identifying contraband devices, according to CellAntenna, when a variety of unique identifying information about the device is transmitted to the device's CMRS provider, the CMRS provider can identify the device in its systems and terminate service to the device. The Commission seeks comment on CellAntenna's technical analysis and on any safeguards that may be necessary to protect against the unlikely event that an authorized device outside of the correctional facility is detected.

11. Additionally, the Commission seeks comment on whether contraband wireless devices identified by CellAntenna's technology and other technologies, including managed access systems, have the requisite characteristics, including accuracy, to identify contraband wireless devices for purposes of service termination while avoiding incorrect identification of legitimate devices. Should the Commission establish minimum performance standards for detection systems or encourage voluntary commitments? How would the Commission verify that an entity meets such a standard? Alternatively, to the extent that detection equipment requires FCC certification, the Commission could impose technical accuracy standards through the equipment certification process. The Commission seeks comment on these alternatives, and on their costs and benefits.

12. The Commission seeks comment on a number of issues surrounding the process of requesting termination of service to contraband devices. Specifically, would correctional facilities have greater operational flexibility if an authorized agent were able to make the formal termination request? What criteria should be used to determine the authorized correctional facility personnel? Would such

criteria be an adequate safeguard against the transmission of inaccurate information to a carrier? Do different carriers and different wireless technologies require different information to identify and terminate service to a device? Do the requirements differ for resellers or small wireless providers relative to large wireless providers? Are all types of detection equipment and systems capable of capturing the identical suite of information? The Commission seeks comment on any electronic or other means in addition to email and fax that would be an acceptable way for a correctional facility to transmit a termination request.

13. With regard to the process of terminating service to contraband devices, the Commission seeks comment on a variety of issues. Should the Commission establish set intervals or times at which a correctional facility or detection provider can transmit batch termination requests to a carrier? Is it relevant if both the carrier and correctional facility have automated systems for requesting termination and terminating service to contraband wireless devices? Are there specific issues to consider with respect to processing termination requests by small or rural CMRS providers? What role could the database being developed by the wireless industry to identify and terminate service to stolen smartphones play in this process? Could participating wireless providers reduce implementation costs by relying on existing technologies and processes? The Commission seeks comment on ways that a correctional facility with a detection system will be able to identify the appropriate individual or group within a carrier to transmit termination requests. Alternatively, is there a common interface that could be used to automate the transmission and processing of the termination request? The Commission also seeks comment on the best means for a carrier to acknowledge receipt of a termination request. Could confirmation that termination occurred within any set timeframe be sufficient?

14. The Commission seeks comment on the processes and costs for a carrier to terminate service to unauthorized devices, and the costs for a carrier, correctional facility, or third party detection provider to implement procedures and technologies to ensure that disruption of service to legitimate wireless users is minimized or prevented. If the Commission requires the carrier to send a message as CellAntenna proposes, would it be necessary or feasible to provide a vehicle through which the user of the alleged contraband device could demonstrate that the pending termination is in error? Are there other intermediary

steps a carrier could take to attempt to confirm that service is being terminated to a contraband device and not a legal device? Are there any costs associated with sending such notification and, if so, who should bear them? CellAntenna proposes to require the carrier to suspend service to the device within one hour after receipt of notification. The Commission seeks comment on whether this interval is appropriate. Would some carriers, for example small or rural providers, require additional time relative to larger carriers? Does the time period affect the cost of compliance with these proposals?

15. The Commission seeks comment on its belief that it has authority pursuant to section 303 of the Act to require CMRS providers to terminate service to contraband wireless devices. The Commission also seeks comment on the possible effectiveness of voluntary carrier participation in an industry wide effort to terminate service to contraband wireless devices.

Applicability of Prohibitions on Intercepting and Publishing Communications and on the Use of Pen Register and Trap and Trace Devices

16. The Commission seeks comment on the extent to which providers or operators of managed access or detection systems comply with section 705 of the Act if they divulge or publish the existence of a communication for the purpose of operating the system, and whether such providers or operators are entitled to receive communications under section 705 of the Act. The Commission also seeks comment on whether any of the proposals regarding detection and managed access systems would implicate the pen registers and trap and trace devices chapter of Title 18 of the U.S.C. and, to the extent that a proposal would implicate that chapter, could the consent exception nevertheless permit operation of a device?

Other Technological Solutions

17. Although the Commission does not propose any measures beyond those designed to facilitate the use and improve the efficacy of managed access and detection systems for addressing the problem of contraband wireless devices in correctional facilities, the Commission invites comment on

other technological solutions, whether discussed in previously filed documents summarized in the NPRM, or set out in comments filed in response to the NPRM.

INITIAL REGULATORY FLEXIBILITY ACT ANALYSIS

18. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the NPRM. Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines indicated in the **DATES** section of this document. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

Need for, and Objectives of, the Proposed Rules

19. The rules proposed in the NPRM are necessary to improve the viability of different technologies used to combat contraband wireless devices in correctional facilities. Prisoners can use contraband wireless devices to engage in criminal activity such as arranging the delivery of contraband drugs or other goods, transmitting information on prison staff to or from non-inmates, and harassing witnesses or other individuals. These activities threaten the safety of prison employees, other prisoners, and the general public.

20. The proposed rules seek to improve the viability of technologies that detect wireless devices in correctional facilities and that can block transmissions to or from unauthorized wireless devices in correctional facilities. First, the Commission proposes to streamline the process for approving or accepting spectrum lease applications or notifications for spectrum leases entered into for managed access systems used in correctional facilities under its leasing procedures in part 1 of its rules. Second, the Commission proposes to require CMRS providers to terminate service to contraband wireless devices in correctional facilities that have been identified by a detection system. While not proposing any rule or process changes with respect to other possible wireless device interdiction technologies, the Commission seeks comment on other possible solutions.

Legal Basis

21. The legal basis for any action that may be taken pursuant to the NPRM is contained in sections 2, 4(i), 4(j), 301, 302, 303, 307, 308, 309, 310, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(j), 301, 302a, 303, 307, 308, 309, 310, and 332.

Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

22. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that will be affected by the proposed rules, if adopted. The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. Under the Small Business Act, a “small business concern” is one that: 1) is independently owned and operated; 2) is not dominant in its field of operation; and 3) meets any additional criteria established by the SBA.

23. Small Businesses. Nationwide, there are a total of approximately 27.5 million small businesses, according to the SBA.

24. Wired Telecommunications Carriers. The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. According to Census Bureau data for 2007, there were 3,188 firms in this category, total, that operated for the entire year. Of this total, 3144 firms had employment of 999 or fewer employees, and 44 firms had employment of 1000 employees or more. Thus, under this size standard, the majority of firms can be considered small.

25. Interexchange Carriers (IXCs). Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to interexchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of these 359 companies, an estimated 317 have 1,500 or fewer employees and 42

have more than 1,500 employees. Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by rules adopted pursuant to the NPRM.

26. Local Resellers. The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 211 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by rules adopted pursuant to the NPRM.

27. Toll Resellers. The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 857 have 1,500 or fewer employees and 24 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by rules adopted pursuant to the NPRM.

28. Other Toll Carriers. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage. Of these, an estimated 279 have 1,500 or fewer employees and five have more than 1,500 employees. Consequently, the Commission estimates that most Other Toll Carriers are small entities that may be affected by the rules and policies adopted pursuant to the NPRM.

29. 800 and 800-Like Service Subscribers. Neither the Commission nor the SBA has developed a small business size standard specifically for 800 and 800-like service (toll free) subscribers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. The most reliable source of information regarding the number of these service subscribers appears to be data the Commission collects on the 800, 888, 877, and 866 numbers in use. According to the Commission's data, as of September 2009, the number of 800 numbers assigned was 7,860,000; the number of 888 numbers assigned was 5,588,687; the number of 877 numbers assigned was 4,721,866; and the number of 866 numbers assigned was 7,867,736. The Commission does not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small businesses under the SBA size standard. Consequently, the Commission estimates that there are 7,860,000 or fewer small entity 800 subscribers; 5,588,687 or fewer small entity 888 subscribers; 4,721,866 or fewer small entity 877 subscribers; and 7,867,736 or fewer small entity 866 subscribers.

30. Wireless Telecommunications Carriers (except Satellite). Since 2007, the SBA has recognized wireless firms within this new, broad, economic census category. Prior to that time, such firms were within the now-superseded categories of Paging and Cellular and Other Wireless Telecommunications. Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. For this category, census data for 2007 show that there were 1,383 firms that operated for the entire year. Of this total, 1,368 firms had employment of 999 or fewer employees and 15 had employment of 1000 employees or more. Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) Telephony services. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Consequently, the Commission estimates that approximately half or more of these

firms can be considered small. Thus, using available data, the Commission estimates that the majority of wireless firms can be considered small.

31. Broadband Personal Communications Service. The broadband personal communications service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined “small entity” for Blocks C and F as an entity that has average gross revenues of \$40 million or less in the three previous calendar years. For Block F, an additional classification for “very small business” was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years. These standards defining “small entity” in the context of broadband PCS auctions have been approved by the SBA. No small businesses, within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. In 1999, the Commission re-auctioned 347 C, E, and F Block licenses. There were 48 small business winning bidders. In 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction 35. Of the 35 winning bidders in this auction, 29 qualified as “small” or “very small” businesses. Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant. In 2005, the Commission completed an auction of 188 C block licenses and 21 F block licenses in Auction 58. There were 24 winning bidders for 217 licenses. Of the 24 winning bidders, 16 claimed small business status and won 156 licenses. In 2007, the Commission completed an auction of 33 licenses in the A, C, and F Blocks in Auction 71. Of the 14 winning bidders, six were designated entities. In 2008, the Commission completed an auction of 20 Broadband PCS licenses in the C, D, E and F block licenses in Auction 78.

32. Advanced Wireless Services. In 2008, the Commission conducted the auction of Advanced Wireless Services (AWS) licenses. This auction, which as designated as Auction 78, offered 35 licenses in the AWS 1710-1755 MHz and 2110-2155 MHz bands (AWS-1). The AWS-1 licenses

were licenses for which there were no winning bids in Auction 66. That same year, the Commission completed Auction 78. A bidder with attributed average annual gross revenues that exceeded \$15 million and did not exceed \$40 million for the preceding three years (“small business”) received a 15 percent discount on its winning bid. A bidder with attributed average annual gross revenues that did not exceed \$15 million for the preceding three years (“very small business”) received a 25 percent discount on its winning bid. A bidder that had combined total assets of less than \$500 million and combined gross revenues of less than \$125 million in each of the last two years qualified for entrepreneur status. Four winning bidders that identified themselves as very small businesses won 17 licenses. Three of the winning bidders that identified themselves as a small business won five licenses. Additionally, one other winning bidder that qualified for entrepreneur status won 2 licenses.

33. Specialized Mobile Radio. The Commission awards small business bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to entities that had revenues of no more than \$15 million in each of the three previous calendar years. The Commission awards very small business bidding credits to entities that had revenues of no more than \$3 million in each of the three previous calendar years. The SBA has approved these small business size standards for the 800 MHz and 900 MHz SMR Services. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction was completed in 1996. Sixty bidders claiming that they qualified as small businesses under the \$15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels was conducted in 1997. Ten bidders claiming that they qualified as small businesses under the \$15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band. A second auction for the 800 MHz band was conducted in 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.

34. The auction of the 1,053 800 MHz SMR geographic area licenses for the General Category channels was conducted in 2000. Eleven bidders won 108 geographic area licenses for the General Category channels in the 800 MHz SMR band qualified as small businesses under the \$15

million size standard. In an auction completed in 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were awarded. Of the 22 winning bidders, 19 claimed small business status and won 129 licenses. Thus, combining all three auctions, 40 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small business.

35. In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended implementation authorizations in the 800 and 900 MHz bands. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than \$15 million. One firm has over \$15 million in revenues. In addition, we do not know how many of these firms have 1500 or fewer employees. The Commission assumes, for purposes of this analysis, that all of the remaining existing extended implementation authorizations are held by small entities, as that small business size standard is approved by the SBA.

36. Lower 700 MHz Band Licenses. The Commission previously adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. The Commission defined a “small business” as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the preceding three years. A “very small business” is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$15 million for the preceding three years. Additionally, the Lower 700 MHz Band had a third category of small business status for Metropolitan/Rural Service Area (MSA/RSA) licenses, identified as “entrepreneur” and defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years. The SBA approved these small size standards. The Commission conducted an auction in 2002 of 740 Lower 700 MHz Band licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)). Of the 740 licenses available for auction, 484 licenses were sold to 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329

licenses. The Commission conducted a second Lower 700 MHz Band auction in 2003 that included 256 licenses: 5 EAG licenses and 476 Cellular Market Area licenses. Seventeen winning bidders claimed small or very small business status and won 60 licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses. In 2005, the Commission completed an auction of 5 licenses in the Lower 700 MHz Band, designated Auction 60. There were three winning bidders for five licenses. All three winning bidders claimed small business status.

37. In 2007, the Commission reexamined its rules governing the 700 MHz band in the 700 MHz Second Report and Order, at 72 FR 48814, Aug. 24, 2007. The 700 MHz Second Report and Order revised the band plan for the commercial (including Guard Band) and public safety spectrum, adopted services rules, including stringent build-out requirements, an open platform requirement on the C Block, and a requirement on the D Block licensee to construct and operate a nationwide, interoperable wireless broadband network for public safety users. An auction of A, B and E block licenses in the Lower 700 MHz band was held in 2008. Twenty winning bidders claimed small business status (those with attributable average annual gross revenues that exceed \$15 million and do not exceed \$40 million for the preceding three years). Thirty three winning bidders claimed very small business status (those with attributable average annual gross revenues that do not exceed \$15 million for the preceding three years). In 2011, the Commission conducted Auction 92, which offered 16 Lower 700 MHz band licenses that had been made available in Auction 73 but either remained unsold or were licenses on which a winning bidder defaulted. Two of the seven winning bidders in Auction 92 claimed very small business status, winning a total of four licenses.

38. Upper 700 MHz Band Licenses. In the 700 MHz Second Report and Order, the Commission revised its rules regarding Upper 700 MHz band licenses. In 2008, the Commission conducted Auction 73 in which C and D block licenses in the Upper 700 MHz band were available. Three winning bidders claimed very small business status (those with attributable average annual gross revenues that do not exceed \$15 million for the preceding three years).

39. Satellite Telecommunications. Since 2007, the SBA has recognized satellite firms within this revised category, with a small business size standard of \$15 million. The most current Census Bureau data are from the economic census of 2007, and we will use those figures to gauge the prevalence of small businesses in this category. Those size standards are for the two census categories of “Satellite Telecommunications” and “Other Telecommunications.” Under the “Satellite Telecommunications” category, a business is considered small if it had \$15 million or less in average annual receipts. Under the “Other Telecommunications” category, a business is considered small if it had \$25 million or less in average annual receipts.

40. The first category of Satellite Telecommunications “comprises establishments primarily engaged in providing point-to-point telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.” For this category, Census Bureau data for 2007 show that there were a total of 512 firms that operated for the entire year. Of this total, 464 firms had annual receipts of under \$10 million, and 18 firms had receipts of \$10 million to \$24,999,999. Consequently, the Commission estimates that the majority of Satellite Telecommunications firms are small entities that might be affected by rules adopted pursuant to the NPRM.

41. The second category of Other Telecommunications “primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.” For this category, Census Bureau data for 2007 show that there were a total of 2,383 firms that operated for the entire year. Of this total, 2,346 firms had annual receipts of under \$25 million. Consequently, the Commission estimates that the majority of Other Telecommunications firms are small entities that might be affected by the NPRM.

42. Other Communications Equipment Manufacturing. The Census Bureau defines this category to include: “establishments primarily engaged in manufacturing communications equipment (except telephone apparatus, and radio and television broadcast, and wireless communications equipment).” In this category, the SBA deems a business manufacturing other communications equipment to be small if it has 750 or fewer employees. For this category of manufacturers, Census data for 2007 show that there were 452 establishments that operated that year. Of the 452 establishments, 4 had 500 or greater employees. Accordingly, the Commission estimates that a substantial majority of the manufacturers of equipment used to provide interoperable and other video-conferencing services are small.

43. Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing. The Census Bureau defines this category as follows: “This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.” The SBA has developed a small business size standard for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing which is: all such firms having 750 or fewer employees. According to Census Bureau data for 2007, there were a total of 939 establishments in this category that operated for part or all of the entire year. Of this total, 17 had 1,000 or more employees and 27 had 500 or more employees. Thus, under this size standard, the majority of firms can be considered small.

44. Engineering Services. The Census Bureau defines this category to include: “establishments primarily engaged in applying physical laws and principles of engineering in the design, development, and utilization of machines, materials, instruments, structures, process, and systems.” The SBA deems engineering services firms to be small if they have \$4.5 million or less in annual receipts, except military and aerospace equipment and military weapons engineering establishments are deemed small if they have \$27 million or less an annual receipts. According to Census Bureau data for 2007,

there were 58,391 establishments in this category that operated the full year. Of the 58,391 establishments, 5,943 had \$5 million or greater in receipts and 2,892 had \$10 million or more in annual receipts. Accordingly, the Commission estimates that a majority of engineering service firms are small.

45. Search, Detection, Navigation, Guidance, Aeronautical, and Nautical System Instrument Manufacturing. The Census Bureau defines this category to include “establishments primarily engaged in manufacturing direction, navigation, guidance, aeronautical, and nautical systems and instruments.” The SBA deems Search, Detection, Navigation, Guidance, Aeronautical, and Nautical and Instrument Manufacturing firms to be small if they have 750 or fewer employees. According to Census Bureau data for 2007, there were 647 establishments in operation in that year. Of the 647 establishments, 36 had 1,000 or more employees, and 50 had 500 or more employees. Accordingly, the Commission estimates that a majority of firms in this category are small.

46. Security Guards and Patrol Services. The Census Bureau defines this category to include “establishments primarily engaged in providing guard and patrol services.” The SBA deems security guards and patrol services firms to be small if they have \$18.5 million or less in annual receipts. According to Census Bureau data for 2007, there were 9,198 establishments in operation the full year. Of the 9,198 establishments, 355 had greater than \$10 million in annual receipts. Accordingly, the Commission estimates that a majority of firms in this category are small.

47. All Other Support Services. The Census Bureau defines this category to include “establishments primarily engaged in providing day-to-day business and other organizations support services.” The SBA deems all other support services firms to be small if they have \$7 million or less in annual receipts. According to Census Bureau data for 2007, there were 14,539 establishments in operation the full year. Of the 14,539 establishments, 273 had \$10 million or more in annual receipts, and 639 had \$5 million or greater in annual receipts. Accordingly, the Commission estimates that a majority of firms in this category are small.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

48. In the NPRM, the Commission seeks comment regarding rule changes to improve the viability of technologies used to combat contraband wireless devices in correctional facilities. The rules are prospective in that they only apply if an entity avails itself of managed access or detection technologies. There are two classes of small entities that may be impacted; providers of wireless services, and providers or operators of managed access or detection systems used in correctional facilities.

49. The proposed rules streamline the process for leasing spectrum to be used in a managed access system in correctional facilities, and require CMRS providers to terminate service to identified contraband wireless devices. With respect to rule changes to streamline the spectrum leasing process for managed access systems, the proposed rules do not directly impose any new recordkeeping requirements. To the extent that filing a form seeking approval or providing notification of a lease entered into for a managed access system is a reporting requirement, the proposed rules streamline reporting requirements.

50. Under current rules, the licensee and lessee of spectrum must file Form 608 seeking approval or providing notification of a lease. Due to existing leasing rules intended to protect competition, any lease notification or application for a managed access system filed after the first will likely result in a protracted application or notification review, because subsequent applications or notifications will be for spectrum covering identical geographic areas that could be used to provide an interconnected mobile service.

51. The Commission's proposed rule changes streamline the application review process by allowing entities to certify that the application or notification is for a managed access system in a state or local correctional facility. The proposed rules will require entities to attach a new certification explaining the nature of the managed access system, including the location of the correctional facility, the lessee's relationship to the correctional facility, and the exact coordinates of the leased spectrum boundaries. While this may qualify as a reporting requirement, absent the rule lessees would still be required to identify the specific coordinates of the leased spectrum area in an attachment to Form 608. Therefore, to the extent this qualifies as a reporting requirement, the impact is neutral, if not positive.

52. The proposed rules will streamline the filing requirements for managed access providers that seek to modify the lease to indicate that the service offering is a PMRS. Under current processes, the lessee is presumed to be offering the same services as the licensee, and in managed access leases, the lessor likely provides a CMRS. Therefore, to modify the service offering to PMRS, the lessee must first file a lease application, and once the lease application is approved, it has to file to modify the lease to establish that the service is PMRS. Under the proposal in the NPRM, managed access leases would presumptively be PMRS, thereby eliminating the need to file a modification.

53. The NPRM also seeks comment on whether to require the managed access provider to provide notice to the households or businesses surrounding a correctional facility prior to activating the system. If the Commission adopts this requirement, it would be a new obligation that would consume some level of resources to identify the relevant households or businesses, generate a notice letter, mail the letter, and provide staff for any possible responses to the letter.

54. The proposed rules governing detection systems may impose new recordkeeping requirements and will impose new compliance requirements for CMRS providers and operators of detection systems. The proposed rules will require CMRS providers to terminate service to identified contraband wireless devices in correctional facilities. To the extent that any correctional facility installs and operates a system that can identify the relevant information necessary to terminate service to an identified contraband wireless device – therefore triggering CMRS providers’ obligations – CMRS providers would have to implement some type of internal process to terminate service to the contraband devices. This will likely require the allocation of resources to create the system, including some level of additional staffing necessary to meet the obligations under this requirement.

55. Additionally, the Commission seeks comment on the process for transmitting termination requests, including how the information that must be included in a termination request. It is possible that an outgrowth of the questions asked and responses received could result in specific requirements for the form in which the request is transmitted, including the type of information that is required. This may also require some level of recordkeeping to ensure that service to contraband devices, and not to legitimate

devices, is terminated. To the extent the rules do impose these requirements, they will be necessary to ensure that legitimate wireless users are not impacted by operation of the system, which should be the minimum performance objective for any detection system. Therefore, while a specific form in which the termination request must be transmitted may impose some compliance or recordkeeping obligations, they are a necessary predicate for the operation of a detection system.

Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

56. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

57. The proposed rules govern systems and technologies that are not widely deployed in the marketplace. To date, only two managed access system that have received Commission authorization or approval are operational. Similarly, while there are detection systems in active use in correctional facilities, there are no current rules that require CMRS providers to terminate service to contraband devices identified by detection systems.

58. The Commission seeks comment on the impact of some of its proposals, specifically with respect to the proposal to require CMRS providers to terminate service to identified contraband wireless devices, on small businesses. Commenters are asked whether small entities face any special or unique issues with respect to terminating service to devices, and whether they would require additional time to take such action.

59. Historically, the Commission's license applications are not modified for small entities, and the Commission does not propose to do so in the NPRM for the proposed modification of Form 608 for managed access leases. Sections 308, 309, and 310(d) of the Act require the Commission to determine whether licensing transactions are in the public interest. This analysis requires the same type of information regardless of the size of the entity.

60. The NPRM, while it discusses at length the general design of managed access and detection systems, does not directly require or propose to require any specific design standard. However, the NPRM does ask whether a specific performance standard may be necessary to ensure the accuracy of detection systems. The NPRM asks whether the standard should differ between rural and urban areas, or between large and small detection system providers or operators.

61. The NPRM does not propose any exemption for small entities. The Commission finds an overriding public interest in preventing the illicit use of contraband wireless devices by prisoners to perpetuate criminal enterprises, and a strong public interest obligation for the transfer of spectrum rights. Managed access providers must meet the necessary filing requirements for the Commission to meet its obligations under the Act. Further, to the extent that a small entity could be exempt from the proposed service termination requirement, it would reduce the overall effectiveness of a detection system. If inmates discover that a wireless provider whose service area includes the correctional facility does not terminate service to found devices within the facility, inmates will accordingly use only that service.

Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

62. The NPRM seeks comment on the application and relevance of section 705 of the Act and Title 18 of the U.S. Code.

ORDERING CLAUSES

63. Pursuant to the authority contained in sections 1, 2, 4(i), 4(j), 301, 302, 303, 307, 308, 309, 310, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(j), 301, 302a, 303, 307, 308, 309, 310, and 332, the NPRM IS ADOPTED.

64. Pursuant to the authority contained in sections 1, 2, 4(i), 4(j), 301, and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(j), 301, 303, and sections 1.2 and 1.407 of the Commission's rules, 47 CFR 1.2, 1.407, the petitions listed in the caption of the NPRM are GRANTED to the extent indicated herein, and otherwise DENIED.

65. The Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of the NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Parts 1 and 20

Administrative practice and procedure, Communications common carriers, Radio, Reporting and recordkeeping requirements, Telecommunications, Commercial mobile radio service.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch,
Secretary.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 1 and 20 as follows:

PART 1—PRACTICE AND PROCEDURE

1. The authority citation for part 1 continues to read as follows:

Authority: 15 U.S.C. 79 et seq.; 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, 227, 303(r), and 309, Cable Landing License Act of 1921, 47 U.S.C. 35-39, and the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112-96.

2. Amend § 1.931 by revising paragraph (a)(1) and adding paragraph (a)(2)(v) to read as follows:

§ 1.931 Application for special temporary authority.

(a) Wireless Telecommunications Services. (1) In circumstances requiring immediate or temporary use of station in the Wireless Telecommunications Services, carriers may request special temporary authority (STA) to operate new or modified equipment. Such requests must be filed electronically using FCC Form 601 and must contain complete details about the proposed operation and the circumstances that fully justify and necessitate the grant of STA. Such requests should be filed in time to be received by the Commission at least 10 days prior to the date of proposed operation or, where an extension is sought, 10 days prior to the expiration date of the existing STA. Requests received less than 10 days prior to the desired date of operation may be given expedited consideration only if compelling reasons are given for the delay in submitting the request. Otherwise, such late-filed requests are considered in turn, but action might not be taken prior to the desired date of operation. Requests for STA for operation of a station used in a managed access system, as defined in § 1.9003 (47 CFR 1.9003), may be received one day prior to the desired date of operation. Requests for STA must be accompanied by the proper filing fee.

(2) * * *

(v) The STA is for operation of a station used in a managed access system, as defined in § 1.9003.

3. Amend § 1.9003 by adding the definition Managed access system in alphabetical order to read as follows:

§ 1.9003 Definitions.

* * * * *

Managed access system. A managed access system is a system comprised of one or more stations operating under a license, or lease arrangement entered into exclusively for the operation of such system, and is used in a correctional facility exclusively to prevent transmissions to or from unauthorized wireless devices within the boundaries of the facility.

* * * * *

4. Amend § 1.9020 by revising paragraph (e)(2) introductory text, redesignating paragraphs (e)(2)(ii) and (e)(2)(iii) as paragraphs (e)(2)(iii) and (e)(2)(iv), respectively, and adding new paragraph (e)(2)(ii) to read as follows:

§ 1.9020 Spectrum manager leasing arrangements.

* * * * *

(e) * * *

(2) Immediate processing procedures. Notifications that meet the requirements of paragraph (e)(2)(i) of this section, and notifications for managed access systems as defined in § 1.9003 that meet the requirements of paragraph (e)(2)(ii) of this section, qualify for the immediate processing procedures.

* * * * *

(ii) A lessee of spectrum used in a managed access system qualifies for these immediate processing procedures if the notification is sufficiently complete and contains all necessary information and certifications (including those relating to eligibility, basic qualifications, and foreign ownership) required for notifications processed under the general notification procedures set forth in paragraph (e)(1)(i) of this section, and must not require a waiver of, or declaratory ruling pertaining to, any applicable Commission rules.

* * * * *

5. Amend § 1.9030 by revising paragraph (e)(2) introductory text, redesignating paragraphs (e)(2)(ii) and (e)(2)(iii) as paragraphs (e)(2)(iii) and (e)(2)(iv), respectively, and adding new paragraph (e)(2)(ii) to read as follows:

§ 1.9030 Long-term *de facto* transfer leasing arrangements.

* * * * *

(e) * * *

(2) Immediate processing procedures. Applications that meet the requirements of paragraph (e)(2)(i) of this section, and notifications for managed access systems as defined in § 1.9003 that meet the requirements of paragraph (e)(2)(ii) of this section, qualify for the immediate approval procedures.

* * * * *

(ii) A lessee of spectrum used in a managed access system qualifies for these immediate approval procedures if the notification is sufficiently complete and contains all necessary information and certifications (including those relating to eligibility, basic qualifications, and foreign ownership) required for notifications processed under the general notification procedures set forth in paragraph (e)(1)(i) of this section, and must not require a waiver of, or declaratory ruling pertaining to, any applicable Commission rules.

* * * * *

PART 20—COMMERCIAL MOBILE RADIO SERVICES

6. The authority citation for part 20 continues to read as follows:

Authority: 47 U.S.C. 154, 160, 201, 251–254, 301, 303, 316 and 332 unless otherwise noted.

Section 20.12 is also issued under 47 U.S.C. 1302.

7. Amend § 20.9 by revising paragraph (b) introductory text, and adding paragraph (d), to read as follows:

§ 20.9 Commercial mobile radio service.

* * * * *

(b) Except as set forth in paragraph (d) of this section, licensees of a Personal Communications Service or applicants for a Personal Communications Service license, and VHF Public Coast Station

geographic area licensees or applicants, and Automated Maritime Telecommunications System (AMTS) licensees or applicants, proposing to use any Personal Communications Service, VHF Public Coast Station, or AMTS spectrum to offer service on a private mobile radio service basis must overcome the presumption that Personal Communications Service, VHF Public Coast, and AMTS Stations are commercial mobile radio services.

* * * * *

(d)(1) A service provided over a managed access system, as defined in § 1.9003 of this chapter, is presumed to be a private mobile radio service;

(2) A party providing service over a managed access system, as defined in § 1.9003 of this chapter, may seek to overcome the presumption that such service is a private mobile radio service by attaching a certification to a lease application or notification certifying that the mobile service in question meets the definition of commercial mobile radio service, or the mobile service in question is the functional equivalent of a service that meets the definition of a commercial mobile radio service. The party may also seek to overcome the presumption through the process set forth in paragraph (a)(14)(ii) of this section.

8. Add § 20.22 to read as follows:

§ 20.22 Service termination upon notice of an unauthorized user.

CMRS providers are required to terminate service to any device identified by a qualifying authority as unauthorized within the confines of a correctional facility.

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